THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A.No.254 of 2005

JUDGMENT:

The appeal is filed by the United Insurance Company Limited, challenging the order dated 05.10.2004 passed in O.P.No.2877 of 2002 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad -cum-XVI Additional Chief Judge, Hyderabad.

The facts stated are that on 20.11.2002 at about 9.00 A.M. when the petitioner No.1 was taking water from Municipality Water Tank near Amberdkar Nagar, Neredmet, Hyderabad, and at that time, the Tractor and Trailor bearing No.AP B 865 and 866 driven by its driver with high speed, rashly and negligently and ran over the deceased Shahistha. Due to the said impact,t he deceased received fatal injuries and died on the spot. The accident took place due to the rash and negligent driving of the driver of the offending vehicle. The petitioner No.1 is the mother and petitioner No.2 is the father of the deceased, filed the above said O.P. under Section 166 of Motor Vehicles Act claiming compensation of Rs.3,00,000/-. The deceased was aged about three years as on the date of the accident.

Respondent No.1 remained ex parte. Respondent No.2 filed counter before the Tribunal denying the petition allegations. It was further contended that the driver of the offending vehicle has no subsisting valid licence to drive the vehicle at the material time of the accident, he also denied the age of the deceased and was student and put the petitioners to the strict proof of the same and the claim made by the petitioners is excessive.

Based on the rival claims, necessary issues were framed. On behalf of the petitioners, the first petitioner was examined as PW 1 and marked Exs.A1 to A4. Exs.B1 was marked with the consent of both the parties.

On consideration of evidence on record, the Tribunal held that accident occurred due to rash and negligent driving of the driver of Tractor and Trailor bearing No.AP B 865 and 866 by its driver, awarded a sum of Rs.1,50,000/-

with proportionate costs payable by respondent Nos.1 and 2 jointly and severally with 6% interest per annum from the date of petition till realization. Aggrieved by the same, Insurance Company filed this appeal.

Heard learned counsel appearing for the parties and perused the material made available on record.

Learned counsel appearing for the appellant/respondent No.2 submits that the Tribunal had wrongly erred in awarding a huge compensation of Rs.1,50,000/- for the death of a baby of two years. He also contended that the Tribunal had failed to see that the respondents/claimants are not the dependants on the deceased as for applying second schedule under Section 163-A of M.V.Act for computation of compensation though the deceased was two years old in case of a death of a non-earning member, the claimants are not entitled to more than Rs.50,000/- under no fault liability as per the provisions of the Act.

As seen from the record, PW.1, who is no other than the father of the deceased. From the contents, it disclosed that on 20.11.2002 at about 9.00 A.M. the municipality water tanker came to the Ambedkar Nagar and the said locality people and the complainant's wife are fetching water, the complainant also present at the spot and while his wife was fetching water, the driver of the water tanker started the vehicle and dashed against the daughter of the complainant, due to which she fell down and her head was crushed and received head injury and died on the spot. The accident occurred due to the rash and negligent driving of the driver of the said water tanker. Basing on the report, S.I. of Police, Neredmet Police registered a case in Crime No.288 of 2002 and took up investigation. Ex.A.1 is the F.I.R. and Ex.A.2 is the charge sheet respectively. After considering the evidence of PW.1 and the contents of the F.I.R. and the charge sheet, the learned Judge held that the deceased died due to rash and negligent driving of the driver of the offending vehicle and not due to the negligence on the part of the deceased.

The deceased is a girl of two years. Hence, as per the II schedule of the M.V.Act, Rs.15,000/- can be taken as notional income and out of that 50%

of the amount can be taken as dependency which comes to Rs.7,500/- (15,000 X ½ = 7,500/-). As the deceased is aged about two years, the age of the mother is to be taken into consideration for the purpose of calculating the dependency. As the age of the deceased mother is 25 years, the relevant multiplier is '18' as per the judgment of the Supreme Court reported in SARALA VERMA VS. DELHI TRANSPORT CORPORATION AND ANOTHER[1] and if applied the correct multiplier the amount of compensation comes to Rs.7,500/- X 18 = 1,35,000/-. An amount of Rs.10,000/- is granted towards loss of estate and Rs.5,000/- is granted towards love and affection totaling to Rs.1,50,000/- (1,35,000 + 10,000 + 5,000 = 1,50,000/-). Therefore, the Tribunal has rightly granted compensation of Rs.1,50,000/-. Hence, I see no reasons to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

In view of the above, CMA filed by the Insurance Company is dismissed. There shall be no order as to costs.

GHULAM MOHAMMED,J

23rd September, 2010.

PNV

[1] 2009 (6) SCALE 129